

## Message Text

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ACTION EB-08

INFO OCT-01 EA-07 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01  
CIAE-00 COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05  
L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05 SS-15 STR-04  
ITC-01 TRSE-00 USIA-06 PRS-01 SP-02 FEA-00 OMB-01  
AF-08 ARA-06 EUR-12 NEA-10 OIC-02 /132 W  
-----071336Z 055382 /44

R 071056Z MAR 77  
FM USMISSION GENEVA  
TO SECSTATE WASHDC 5702  
INFO ALL EC CAPITALS 182  
AMEMBASSY CANBERRA

LIMITED OFFICIAL USE SECTION 1 OF 2 GENEVA 1653

PASS STR AND AGRICULTURE ELECTRONICALLY

E.O. 11652: N/A  
TAGS: ETRD, GATT, EAGR, EEC  
SUBJ: GATT PANEL ON EC MIP AND LICENSING FOR PROCESSED  
FRUITS AND VEGETABLES, MARCH 3, 1977

REF: GENEVA 1449

1. SUMMARY. GATT PANEL ON EC MINIMUM IMPORT PRICE AND  
LICENSING SYSTEM FOR PROCESSED FRUITS AND VEGETABLES HAD  
ITS SECOND AND PRESUMABLY LAST MEETING WITH THE PARTIES  
MARCH 3 TO RECEIVE FURTHER CLARIFICATION AND ELABORATION  
OF U.S. AND EC POSITIONS. COMMUNITY MADE A STATEMENT IN  
ITS DEFENSE WHICH DID NOT GO MUCH BEYOND POINTS ALREADY  
MADE AT LAST MEETING FEBRUARY 11. PANEL QUESTIONS  
TO THE EC HAD TO DO PRIMARILY WITH THE OPERATION OF THE  
MIP SYSTEM FOR TOMATO CONCENTRATES. GATT PANEL WAS  
INTERESTED IN FURTHER ELABORATION OF OUR LEGAL POSITION  
THAT THE EC SYSTEM VIOLATED GATT ARTICLES I, II, VIII,  
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AND XI. THE PANEL PLANS TO MAKE ITS FINAL DETERMINATION  
ON THE MATTER BEFORE THE END OF MARCH AND MAY REQUEST  
ADDITIONAL INFORMATION IN THE INTERIM FROM ONE OR BOTH  
PARTICIPANTS. END SUMMARY.

2. U.S. DELEGATION LED BY STARKEY (STR) MADE PRESENTATION  
REFUTING SPECIFIC POINTS MADE BY EC AT FEBRUARY 11 PANEL

MEETING ALONG LINES OF CLEARED STATEMENT HANDCARRIED BY  
U.S. DEL.

3. THE COMMUNITY STATEMENT MADE FEW ADDITIONAL POINTS BEYOND ITS DEFENSE PRESENTED FEBRUARY 11. THE EC DELEGATION (LED BY MARMULLA) CONTENDED THAT ARTICLES II AND XI WERE MUTUALLY EXCLUSIVE; NAMELY, THE DEPOSIT REQUIREMENT COULD NOT VIOLATE BOTH ARTICLES SINCE ARTICLE II DEALT WITH ADDITIONAL DUTIES AND ARTICLE XI WITH QUANTITATIVE RESTRICTIONS. THE EC MIP SYSTEM ON TOMATO CONCENTRATES COULD THEREFORE ONLY BE EXAMINED IN LIGHT OF ARTICLE XI AND WAS CONSISTENT UNDER SUBPARAGRAPH 2CI AND II. THE LICENSING/DEPOSIT SCHEME FOR OTHER PRODUCTS WAS CONSISTENT WITH ARTICLE VIII AND NECESSARY TO ASSURE THAT IMPORTERS WOULD RESPECT THEIR CONTRACTUAL OBLIGATIONS.

4. THE GATT PANEL SPENT A LONG TIME QUESTIONING THE EC ON ITS MIP SYSTEM, IN PARTICULAR AS TO WHETHER DEPOSIT FORFEITURE CONSTITUTED THE ONLY SANCTION FOR GUARANTEEING THE MIP, WHETHER A PRODUCT COULD BE IMPORTED EVEN THOUGH ITS CIF PRICE DUTY-PAID PLUS DEPOSIT FELL BELOW THE MIP AND HAD THERE BEEN INSTANCES OF DEPOSIT FORFEITURES ON THE MIP. THE EC ANSWERED THE FIRST TWO POINTS IN THE AFFIRMATIVE AND SAID THAT SINCE SEPTEMBER 1, 1975, DEPOSIT FORFEITURES HAD OCCURRED IN 17 INDIVIDUAL CASES INVOLVING FIVE COUNTRIES AND A TOTAL 260 MT OF TOMATO CONCENTRATE. IN FURTHER COMMENTS, MARMULLA STATED HE DID NOT BELIEVE THAT IMPORTS WITH LIMITED OFFICIAL USE

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DEPOSIT FORFEITED WERE EVER PRICED BELOW THE MIP SINCE THE DEPOSIT WAS FIXED AT SUCH A LEVEL AS TO MAKE IT DISADVANTAGEOUS TO UNDERCUT THE MIP.

5. THE GATT PANEL ASKED THE EC TO EXPLAIN HOW THE EC SYSTEM ACTED TO CONTROL THE PRODUCTION AND MARKETING OF TOMATO CONCENTRATE. THE EC EXPLAINED ITS INTERVENTION SYSTEM OF MARKET WITHDRAWALS FOR FRESH TOMATOES AND ITS EFFECT ON TOMATO SUPPLIES TO THE EC TOMATO CONCENTRATE INDUSTRY. A PANEL MEMBER (SEGALLA) QUESTIONED WHETHER ABSENCE OF THE EC INTERVENTION SCHEME WOULD ENCOURAGE OR DISCOURAGE EC TOMATO PRODUCTION. MARMULLA ADMITTED THAT WITHOUT THE MINIMUM SUPPORT AFFORDED BY INTERVENTION PRICE THERE WOULD BE GREATER RISKS TO PRODUCERS.

6. IN RESPONSE TO NUMEROUS PANEL REQUESTS FOR INFORMATION ON THE RELATIONSHIP BETWEEN EC PRODUCER PRICES, INTERVENTION PRICES, WORLD OFFER PRICES, AND THE FIXING OF THE MIP, MARMULLA SAID THE EC WOULD SUBMIT ADDITIONAL

DATA NEXT WEEK. HOWEVER, MARMULLA ADMITTED THAT THERE WAS NO DIRECT RELATIONSHIP BETWEEN THE MIP AND THE INTERVENTION PRICE.

7. THE PANEL WAS INTERESTED IN HOW MANY COUNTRIES HAD ENTERED IN AN ARRANGEMENT WITH THE EC TO GUARANTEE THE MIP. THE EC HAS NOT SIGNED ANY SUCH AGREEMENTS YET BUT EXPLAINED (FEEBLY) WITH RESPECT TO OTHER PRODUCTS THAT EC HAD NOT FOUND IT NECESSARY TO RUN DOWN ANY OFFERS TO DATE BY SUPPLYING COUNTRIES TO GUARANTEE OBSERVANCE OF MIP'S.

8. THE EC DECLARED THAT LICENSES ONCE ISSUED WERE EXEMPT FROM SAFEGUARD ACTION BUT WAS UNABLE TO INDICATE WHERE THIS GUARANTEE WAS PROVIDED IN THE REGULATIONS. IN ADDITION, THE EC COULD NOT ANSWER A PANEL MEMBER (EGGERT) AS TO WHETHER GOODS UNDER LICENSE WOULD BE IMMUNE FROM SAFEGARUD RESTRICTIONS IN THE FORM OF HIGHER DUTIES OR LIMITED OFFICIAL USE

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OTHER CHARGES (AS OPPOSED TO QR'S).

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INFO OCT-01 EA-07 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01  
CIAE-00 COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05  
L-03 LAB-04 NSAE-00 NSC-05 PA-01 AID-05 SS-15 STR-04  
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-----071335Z 055503 /44

R 071056Z MAR 77  
FM USMISSION GENEVA  
TO SECSTATE WASHDC 5703  
INFO ALL EC CAPITALS 183  
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9. U.S. RESPONDED TO PANEL QUESTIONS REF B AS FOLLOWS:  
THE EC LICENSING AND SURETY DEPOSIT SYSTEM CLEARLY WORKS  
TO RESTRICT TRADE IN VIOLATION OF ARTICLE XI. WHEN THE  
DEPOSIT IS FORFEITED AND IMPORTATION DOES NOT TAKE  
PLACE THE SUBSEQUENT ADDITIONAL CHARGE CONSTITUTES A  
PENALTY FOR NOT IMPORTING AND IS IN VIOLATION OF  
ARTICLE VII SUBPARAGRAPH A. WHEN THE PRODUCT IS IM-  
PORTED UNDER A NEW LICENSE WITH A NEW SURETY, THERE  
ARE IN EFFECT TWO ADDITIONAL CHARGES: THE FORFEITED  
SURETY AND CONCOMITTANT ADMINISTRATIVE EXPENSES AND  
THE COST OF THE NEW SURETY WITH CONCOMITTANT ADMINIS-  
TIVE EXPENSES. TO ILLUSTRATE THIS POINT, U.S. CITED  
EXAMPLE OF GERMAN IMPORTER WHO FORFEITED SURETY DEPOSIT  
ON 7680 CASES OF GREEN BEANS FROM WISCONSIN AND HAD  
TO APPLY FOR ADDITIONAL LICENSE WITH ADDITIONAL DEPOSIT  
REQUIREMENT IN ORDER TO IMPORT THE MERCHANDISE. IN  
CASE OF A PRODUCT SUBJECT TO THE MIP, THE PRODUCT IS  
IMPORTED UNDER THE SAME LICENSE AFTER SURETY IS FOR-  
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FEITED. HOWEVER, THE FORFEITURE MAY BE MORE THAN  
THE DIFFERENCE BETWEEN THE ENTRY PRICE AND THE MIP.

10. THE MIP AND LICENSING REQUIREMENTS ARE NEW CON-  
DITIONS UNANTICIPATED NOR PROVIDED ON THE GATT BINDINGS  
RECEIVED BY THE U.S. IN 1962 AND ARE THEREFORE INCON-  
SISTENT WITH ARTICLE II WHICH PROHIBITS INTER ALIA IMPORT  
CHARGES OF ANY KIND IMPOSED ABOVE THE BOUND RATE.

11. IN GENERAL, ARTICLE VIII EXHORTS THE CONTRACTING  
PARTIES TO REDUCE IMPORT AND EXPORT FORMALITIES. THERE  
IS INHERENT IN THE ARTICLE A DUTY NOT TO INCREASE SUCH  
ADMINISTRATIVE BURDENS WHICH ACT TO RESTRICT TRADE.

12. IN ADDITION TO THE QUESTIONS TO THE ABOVE QUESTIONS,  
GATT PANEL MEMBER (YOSHIKUNI) ASKED WHETHER THE LIMITED  
DEFINITION OF "PERISHABLE PRODUCTS" AT THE TIME OF THE  
HAVANA CHARTER STILL APPLIED UNDER PRESENT CIRCUMSTANCES  
AND WHETHER AN IMPORT MEASURE COULD BE CONSISTENT  
WITH ARTICLE XI WHILE INCONSISTENT WITH ARTICLE II. THE  
U.S. EXPLAINED THAT PROCESSED FOODS WERE ALREADY AN  
IMPORTANT ELEMENT IN WORLD TRADE AT THE TIME OF AND WELL  
BEFORE THE HAVANA CHARTER AND THAT THE CONTRACTING  
PARTIES AT THAT TIME HAD DELIBERATELY INTENDED TO LIMIT  
THE EXEMPTION AFFORDED BY ARTICLE XI:2(C)(I) AND (II) TO  
PERISHABLE PRODUCTS NARROWLY DEFINED. U.S. DEL POINTED  
OUT THAT AN IMPORT MEASURE WHICH COULD QUALIFY FOR THE  
EXEMPTIONS ALLOWED UNDER ARTICLE XI AND STILL NULLIFY  
AND IMPAIR RIGHTS ACCRUING UNDER ARTICLE II. HOWEVER,

THE U.S. EMPHASIZED THAT IN THE PARTICULAR INSTANCE  
UNDER INVESTIGATION THE EC MIP SYSTEM IN NO WAY  
CONSTITUTED AN ALLOWABLE EXCEPTION UNDER ARTICLE XI  
AND THEREFORE WAS BOTH INCONSISTENT WITH THAT ARTICLE  
AND ARTICLE II. MOREOVER, THE U.S. POINTED OUT THAT IF  
THE PANEL WERE TO DETERMINE THAT THE MIP ON TOMATO  
CONCENTRATE WERE CONSISTENT WITH ARTICLE XI:2(C)(I) AND (II)  
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THIS WOULD SANCTION THE EC APPLICATION OF MIP'S TO OTHER  
PROCESSED FRUITS AND VEGETABLES WERE MARKET WITHDRAWALS  
SYSTEM, SIMILAR TO FRESH TOMATOES, WERE IN EFFECT: FOR  
EXAMPLE, CANNED MANDARIN ORANGES, CITRUS JUICES, APPLE  
JUICE AND CANNED PEACHES.

12. IN THEIR CONCLUDING REMARKS, THE COMMUNITY MADE ONE  
LAST EFFORT TO DEFEND TOMATO CONCENTRATES AS A PERISH-  
ABLE PRODUCT. TOMATO CONCENTRATE, MARMULLA SAID, WAS A  
PERISHABLE PRODUCT EVEN THOUGH ITS SHELF LIFE WAS LONGER  
THAN FRESH TOMATOES. THE EC SAID THAT SHOULD THE PANEL  
FIND THE EC SYSTEM INCONSISTENT WITH GATT OBLIGATIONS,  
THE EC WILL BE FORCED TO RE-EVALUATE ITS POLICY OF  
CONSOLIDATION AND LIBERALIZATION IN THIS SECTOR.

13. THE CHAIRMAN OF THE PANEL (JAGMETTI) REAFFIRMED HIS  
EARLIER POSITION THAT THE PANEL SHOULD RENDER ITS FINAL  
DETERMINATION ON THIS CASE BEFORE THE END OF MARCH. HE  
SAID THAT THE PANEL IN ITS DETERMINATION MIGHT CALL ON  
BOTH DELEGATIONS FOR FURTHER INFORMATION AND COMMENTS IF  
NECESSARY.CATTO

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## Message Attributes

**Automatic Decaptoning:** X  
**Capture Date:** 01-Jan-1994 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Disposition Approved on Date:**  
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**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
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